

103^D CONGRESS
1ST SESSION

H. R. 3515

To amend the Egg Research and Consumer Information Act, the Watermelon Research and Promotion Act, and the Lime Research, Promotion, and Consumer Information Act of 1990 to revise the operation of these Acts and to authorize the establishment of a fresh cut flowers and fresh cut greens promotion and consumer information program for the benefit of the floricultural industry, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 1993

Mr. DE LA GARZA (for himself, Mr. STENHOLM, Mr. ROBERTS, Mr. LEWIS of Florida, Mr. BOEHNER, Mr. HOLDEN, and Mr. ENGLISH of Oklahoma) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Egg Research and Consumer Information Act, the Watermelon Research and Promotion Act, and the Lime Research, Promotion, and Consumer Information Act of 1990 to revise the operation of these Acts and to authorize the establishment of a fresh cut flowers and fresh cut greens promotion and consumer information program for the benefit of the floricultural industry, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Omnibus Agricultural
3 Research and Promotion Improvement Act”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—EGG RESEARCH AND CONSUMER INFORMATION

Sec. 101. Short title.
Sec. 102. Rate of assessment.
Sec. 103. Exempted egg producers.

TITLE II—WATERMELON RESEARCH AND PROMOTION

Sec. 201. Short title.
Sec. 202. Change to majority vote in referendum procedures.
Sec. 203. Expansion of watermelon plans to entire United States.
Sec. 204. Clarification of differences between producers and handlers.
Sec. 205. Clarification of collection of assessments by the Board.
Sec. 206. Changes to assessment rate not subject to formal rulemaking.
Sec. 207. Elimination of watermelon assessment refund.
Sec. 208. Equitable treatment of watermelon plans.
Sec. 209. Separate consideration of watermelon plan amendments.

TITLE III—FRESH CUT FLOWERS AND FRESH CUT GREENS
PROMOTION AND INFORMATION

Sec. 301. Short title.
Sec. 302. Findings and declaration of policy.
Sec. 303. Definitions.
Sec. 304. Issuance of orders.
Sec. 305. Required terms in orders.
Sec. 306. Assessments.
Sec. 307. Required determinations.
Sec. 308. Referenda.
Sec. 309. Petition and review.
Sec. 310. Enforcement.
Sec. 311. Investigations and power to subpoena.
Sec. 312. Confidentiality.
Sec. 313. Authority for Secretary to suspend or terminate order.
Sec. 314. Construction.
Sec. 315. Regulations.
Sec. 316. Authorization of appropriations.
Sec. 317. Separability.

TITLE IV—LIME RESEARCH, PROMOTION, AND CONSUMER
INFORMATION

Sec. 401. Short title.

Sec. 402. Findings and purpose.
 Sec. 403. Definition of lime.
 Sec. 404. Required terms in orders.
 Sec. 405. Initial referendum.

1 **TITLE I—EGG RESEARCH AND** 2 **CONSUMER INFORMATION**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Egg Research and
 5 Consumer Information Improvement Act”.

6 **SEC. 102. RATE OF ASSESSMENT.**

7 (a) ASSESSMENT TERMS AND CONDITIONS IN OR-
 8 DERS.—Section 8(e) of the Egg Research and Consumer
 9 Information Act (7 U.S.C. 2707(e)) is amended—

10 (1) by designating the first and second sen-
 11 tences as paragraph (1);

12 (2) by designating the fifth and sixth sentences
 13 as paragraph (3);

14 (3) by striking the third and fourth sentences
 15 and inserting the following new paragraph:

16 “(2)(A) The rate of assessment shall be prescribed
 17 by the order, except that the rate of assessment may not
 18 exceed 30 cents per case of commercial eggs or the equiva-
 19 lent thereof.

20 “(B) The Secretary may amend the order to increase
 21 the rate of assessment (subject to the limitation in sub-
 22 paragraph (A)) only if the increase is recommended by the

1 Egg Board and approved by egg producers in a referen-
2 dum conducted under section 9(b).

3 “(C) The Secretary may amend the order to decrease
4 the rate of assessment only if the decrease is recommended
5 by the Egg Board. A decrease in the rate of assessment
6 shall take effect only after the Secretary provides public
7 notice and an opportunity for comment in accordance with
8 section 553 of title 5, United States Code. Sections 556
9 and 557 of such title shall not apply with respect to de-
10 creasing the rate of assessment.”; and

11 (4) by conforming the margins of paragraphs
12 (1) and (3) (as so designated) to the margin of
13 paragraph (2).

14 (b) REFERENDUM REQUIREMENTS.—Section 9 of the
15 Egg Research and Consumer Information Act (7 U.S.C.
16 2708) is amended—

17 (1) by designating the first two sentences as
18 subsection (a);

19 (2) by designating the last sentence as sub-
20 section (c);

21 (3) by inserting after subsection (a) (as so des-
22 ignated) the following new subsection:

23 “(b)(1) Whenever the Egg Board determines, based
24 on scientific studies, marketing analysis, or other similar
25 competent evidence, that an increase in assessment rate

1 is needed to ensure that assessments under the order are
2 set at an appropriate level to effectuate the declared policy
3 of this Act, the Egg Board may request that the Secretary
4 conduct a referendum, as provided in paragraph (2).

5 “(2) When requested by the Egg Board under para-
6 graph (1) or (3), the Secretary shall conduct a referendum
7 among egg producers not exempt hereunder who, during
8 a representative period determined by the Secretary, have
9 been engaged in the production of commercial eggs, for
10 the purpose of ascertaining whether such producers ap-
11 prove the increase in the assessment rate proposed by the
12 Egg Board. The increase in the assessment rate shall take
13 effect if approved or favored by not less than two-thirds
14 of the producers voting in such referendum, or by a major-
15 ity of the producers voting in such referendum if such ma-
16 jority produced not less than two-thirds of all the commer-
17 cial eggs produced by those voting during a representative
18 period defined by the Secretary.

19 “(3) With respect to the order in effect on the date
20 of the enactment of this subsection, the Egg Board shall
21 undertake to determine under paragraph (1), as soon as
22 practicable after such date of enactment, whether to re-
23 quest that the Secretary conduct a referendum under
24 paragraph (2). If the Egg Board makes such a request
25 on competent evidence, as provided in paragraph (1), the

1 Secretary shall conduct such referendum as soon as prac-
2 ticable, but not later than 120 days after receipt of the
3 request from the Egg Board.

4 “(4) Notwithstanding any other provision of this Act,
5 whenever an increase in the assessment rate and the au-
6 thority for additional increases is approved by producers
7 in a referendum under this subsection, the Secretary shall
8 amend the order as appropriate to reflect such vote of pro-
9 ducers. The amendment to the order shall become effective
10 on the date it is issued.”; and

11 (4) by conforming the margins of subsections
12 (a) and (c) (as so designated) to the margin of sub-
13 section (b).

14 **SEC. 103. EXEMPTED EGG PRODUCERS.**

15 (a) INCREASE IN EXEMPTION AMOUNT.—Section
16 12(a)(1) of the Egg Research and Consumer Information
17 Act (7 U.S.C. 2711(a)(1)) is amended by striking “30,000
18 laying hens” and inserting “75,000 laying hens”.

19 (b) ISSUANCE OF AMENDMENT TO ORDER.—To im-
20 plement the amendment made by subsection (a) to the
21 Egg Research and Consumer Information Act, the Sec-
22 retary of Agriculture shall issue an amendment to the egg
23 promotion and research order issued under such Act. The
24 amendment to the order shall be issued after public notice
25 and opportunity for comment in accordance with section

1 553 of title 5, United States Code. Sections 556 and 557
 2 of such title shall not apply with respect to the amendment
 3 to the order. The Secretary shall issue the proposed
 4 amendment to the order not later than 30 days after the
 5 date of the enactment of this title.

6 (c) EFFECTIVE DATE.—The amendment to the egg
 7 promotion and research order required by subsection (b)
 8 shall become effective not later than 120 days after the
 9 date of the enactment of this Act. The amendment shall
 10 not be subject to a referendum under the Egg Research
 11 and Consumer Information Act.

12 **TITLE II—WATERMELON**

13 **RESEARCH AND PROMOTION**

14 **SEC. 201. SHORT TITLE.**

15 (a) SHORT TITLE.—This title may be cited as the
 16 “Watermelon Research and Promotion Improvement Act”.

17 **SEC. 202. CHANGE TO MAJORITY VOTE IN REFERENDUM**

18 **PROCEDURES.**

19 Section 1653 of the Watermelon Research and Pro-
 20 motion Act (7 U.S.C. 4912) is amended—

- 21 (1) by inserting “(a)” after “SEC. 1653.”;
- 22 (2) by striking the third sentence; and
- 23 (3) inserting at the end the following new sub-
- 24 section:

1 “(b) A plan issued under this subtitle shall not take
2 effect unless the Secretary determines that the issuance
3 of the plan is approved or favored by a majority of the
4 producers and handlers (and importers if subject to the
5 plan) voting in the referendum.”.

6 **SEC. 203. EXPANSION OF WATERMELON PLANS TO ENTIRE**
7 **UNITED STATES.**

8 (a) DEFINITIONS.—Section 1643 of the Watermelon
9 Research and Promotion Act (7 U.S.C. 4902(3)) is
10 amended—

11 (1) in paragraph (3), by striking “the forty-
12 eight contiguous States of”; and

13 (2) by adding at the end the following new
14 paragraph:

15 “(10) The term ‘United States’ means each of
16 the several States and the District of Columbia.”.

17 (b) ISSUANCE OF PLANS.—The last sentence of sec-
18 tion 1644 of such Act (7 U.S.C. 4903) is amended by
19 striking “the forty-eight contiguous States of”.

20 **SEC. 204. CLARIFICATION OF DIFFERENCES BETWEEN PRO-**
21 **DUCERS AND HANDLERS.**

22 Section 1647(c) of the Watermelon Research and
23 Promotion Act (7 U.S.C. 4906(c)) is amended by adding
24 at the end the following:

1 “(3) If a producer purchases watermelons from other
2 producers, in a combined total volume that is equal to 25
3 percent or more of the producer’s own production, the pro-
4 ducer shall be eligible to serve on the Board only as a
5 representative of handlers and not as a representative of
6 producers. In addition, if the combined total volume of wa-
7 termelons handled by a producer from the producer’s own
8 production and purchases from other producers’ produc-
9 tion is more than 50 percent of the producer’s own produc-
10 tion, the producer shall be eligible to serve on the Board
11 only as a representative of handlers and not as a rep-
12 resentative of producers.”.

13 **SEC. 205. CLARIFICATION OF COLLECTION OF ASSESS-**
14 **MENTS BY THE BOARD.**

15 Section 1647 of the Watermelon Research and Pro-
16 motion Act (7 U.S.C. 4906) is amended—

- 17 (1) in subsection (f), by striking “collection of
18 the assessments by the Board” and inserting “pay-
19 ment of the assessments to the Board.”; and
20 (2) in paragraphs (1) and (3) of subsection (g),
21 by striking “collected” and inserting “received”.

22 **SEC. 206. CHANGES TO ASSESSMENT RATE NOT SUBJECT**
23 **TO FORMAL RULEMAKING.**

24 Section 1647(f) of the Watermelon Research and
25 Promotion Act (7 U.S.C. 4906(f)), as amended by section

1 205(1), is further amended by adding at the end the fol-
2 lowing new sentences: “In fixing or changing the rate of
3 assessment pursuant to the plan, the Secretary shall com-
4 ply with the notice and comment procedures established
5 under section 553 of title 5, United States Code. Sections
6 556 and 557 of such title shall not apply with respect to
7 fixing or changing the rate of assessment.”.

8 **SEC. 207. ELIMINATION OF WATERMELON ASSESSMENT RE-**
9 **FUND.**

10 Section 1647(h) of the Watermelon Research and
11 Promotion Act (7 U.S.C. 4906(h)) is amended—

12 (1) by inserting “(1) Except as provided in
13 paragraph (2)” after “(h)”; and

14 (2) by adding at the end the following new
15 paragraphs:

16 “(2) If approved in the referendum required by sec-
17 tion 1655(b) relating to the elimination of the assessment
18 refund under paragraph (1), the Secretary shall amend
19 the plan which is in effect on the day before the date of
20 the enactment of the Watermelon Research and Promotion
21 Improvement Act to eliminate such refund provision.

22 “(3) Notwithstanding paragraph (2), if importers are
23 subject to the plan, the plan shall provide that importers
24 of less than 75,000 pounds of watermelons per year shall
25 be entitled to apply for a refund of the equivalent of the

1 rate of assessment paid by domestic producers. The Sec-
2 retary may adjust the weight exemption contained in this
3 paragraph upon the recommendation of the Board after
4 an opportunity for notice and comment to reflect signifi-
5 cant changes in the 5-year average yield per acre of water-
6 melons in the United States.”.

7 **SEC. 208. EQUITABLE TREATMENT OF WATERMELON**
8 **PLANS.**

9 (a) DEFINITIONS.—Section 1643 of the Watermelon
10 Research and Promotion Act (7 U.S.C. 4902), as amended
11 by section 203(a), is further amended—

12 (1) in paragraph (3), by striking the semicolon
13 at the end and inserting the following: “or imported
14 into the United States.”;

15 (2) by redesignating paragraphs (6) and (7) as
16 paragraphs (8) and (9), respectively; and

17 (3) by inserting after paragraph (5) the follow-
18 ing new paragraphs:

19 “(6) The term ‘importer’ means any person
20 who imports watermelons into the United States.

21 “(7) The term ‘plan’ means an order issued by
22 the Secretary under this subtitle.”.

23 (b) ISSUANCE OF PLANS.—Section 1644 of such Act
24 (7 U.S.C. 4903), as amended by section 203(b), is further
25 amended—

1 (1) in the first sentence, by striking “and han-
2 dlers” and inserting “, handlers, and importers”;

3 (2) by striking the second sentence; and

4 (3) in the last sentence, by inserting “or im-
5 ported into the United States” before the period.

6 (c) NOTICE AND HEARINGS.—Section 1645(a) of
7 such Act (7 U.S.C. 4904(a)) is amended—

8 (1) in the first sentence, by striking “and han-
9 dlers” and inserting “, handlers, and importers”;
10 and

11 (2) in the last sentence, by striking “or han-
12 dlers” and inserting “, handlers, or importers”.

13 (d) MEMBERSHIP OF BOARD.—Section 1647(c) of
14 such Act (7 U.S.C. 4906(c)), as amended by section 204,
15 is further amended—

16 (1) by inserting “(1)” after “(c)”;

17 (2) in the second sentence, by striking “pro-
18 ducer and handler members” and inserting “other
19 members”; and

20 (3) by adding at the end the following new
21 paragraph:

22 “(2) If importers are subject to the plan, the Board
23 shall also include one or more representatives of importers
24 who shall be appointed by the Secretary from nominations
25 submitted by importers in such manner as may be pre-

1 scribed by the Secretary. Importer representation on the
2 Board shall be proportionate to the percentage of assess-
3 ments paid by importers to the Board, except that there
4 shall always be at least one representative of importers
5 on the Board. If importers are subject to the plan and
6 fail to select nominees for appointment to the Board, the
7 Secretary may appoint any importers as the representa-
8 tives of importers. Every 5 years, the Secretary shall
9 evaluate the average annual percentage of assessments
10 paid by importers during the most recent 3-year period
11 and adjust, to the extent possible, the number of importer
12 representatives on the Board.”.

13 (e) ASSESSMENTS.—Section 1647(g) of such Act (7
14 U.S.C. 4906(g)), as amended by section 205(2), is further
15 amended—

16 (1) in paragraph (4)—

17 (A) by striking “(4) assessments” and in-
18 serting “(4) Assessments”; and

19 (B) by inserting “in the case of producers
20 and handlers” after “such assessments”; and

21 (2) by adding at the end the following new
22 paragraph:

23 “(5) If importers are subject to the plan, an as-
24 sessment shall also be made on watermelons im-
25 ported into the United States by such importers.

1 The rate of assessment for importers (if subject to
2 the plan) shall be equal to the combined rate for
3 producers and handlers.”.

4 (f) REFUNDS.—Section 1647(h) of such Act (7
5 U.S.C. 4906(h)), as amended by section 207, is further
6 amended—

7 (1) by inserting after “or handler” the first two
8 places it appears the following: “(or importer if sub-
9 ject to the plan)”;

10 (2) by striking “or handler” the last place it
11 appears and inserting “, handler, or importer”.

12 (g) ASSESSMENT PROCEDURES.—Section 1649 of
13 such Act (7 U.S.C. 4908) is amended—

14 (1) in subsection (a)—

15 (A) by inserting “(1)” after “(a)”;

16 (B) by adding at the end the following new
17 paragraph:

18 “(2) If importers are subject to the plan, each im-
19 porter required to pay assessments under the plan shall
20 be responsible for payment to the Board, as it may direct,
21 of the assessment. The assessment on imported water-
22 melons shall be equal to the combined rate for domestic
23 producers and handlers and shall be paid by the importer
24 to the Board at the time of the entry of the watermelons
25 into the United States. Each such importer shall maintain

1 a separate record including the total quantity of water-
2 melons imported into the United States that are included
3 under the terms of the plan, as well as those that are ex-
4 empt under such plan, and shall indicate such other infor-
5 mation as may be prescribed by the Board. No more than
6 one assessment shall be made on any imported water-
7 melons.”;

8 (2) in subsection (b), by inserting “and import-
9 ers” after “Handlers”; and

10 (3) in subsection (c)(1), by inserting “or im-
11 porters” after “handlers”.

12 (h) INVESTIGATIONS.—Section 1652(a) of such Act
13 (7 U.S.C. 4911(a)) is amended—

14 (1) in the first sentence, by striking “a handler
15 or any other person” and by inserting “a person”;

16 (2) in the fourth sentence, by inserting “(or an
17 importer if subject to the plan)” after “a handler”;
18 and

19 (3) in the last sentence, by striking “the han-
20 dler or other person” and inserting “the person”.

21 (i) REFERENDUM.—Section 1653 of such Act (7
22 U.S.C. 4912), as amended by section 202, is further
23 amended—

24 (1) in the first sentence—

1 (A) by striking “and handlers” both places
2 it appears and inserting “, handlers, and im-
3 porters”; and

4 (B) by striking “or handling” and insert-
5 ing “, handling, or importing”;

6 (2) by striking the second sentence; and

7 (3) in the sentence beginning “The ballots”—

8 (A) by striking “or handler” and inserting
9 “, handler, or importer”; and

10 (B) by striking “or handled” and inserting
11 “, handled, or imported”.

12 (j) TERMINATION OF PLANS.—Section 1654(b) of
13 such Act (7 U.S.C. 4913(b)) is amended—

14 (1) in the first sentence—

15 (A) by striking “10 per centum or more”
16 and inserting “at least 10 percent of the com-
17 bined total”; and

18 (B) by striking “and handlers” both places
19 it appears and inserting “, handlers, and im-
20 porters”;

21 (2) in the second sentence—

22 (A) by striking “or handle” and inserting
23 “, handle, or import”;

24 (B) by striking “50 per centum” and in-
25 serting “50 percent of the combined total”; and

1 (C) by striking “or handled by the han-
2 dlers,” and inserting “, handled by the han-
3 dlers, and imported by the importers”; and
4 (3) by striking the last sentence.

5 (k) CONFORMING AND TECHNICAL AMENDMENTS.—
6 Such Act is further amended—

7 (1) in section 1642(a)(5) (7 U.S.C.
8 4901(a)(5)), by striking “and handling” and insert-
9 ing “handling, and importing”;
10 (2) in the first sentence of section 1642(b) (7
11 U.S.C. 4901(b))—

12 (A) by inserting “, or imported into the
13 United States,” after “harvested in the United
14 States”; and

15 (B) by striking “produced in the United
16 States”;

17 (3) in section 1643 (7 U.S.C. 4902), as amend-
18 ed by subsection (a) and section 203—

19 (A) by striking “subtitle—” and inserting
20 “subtitle.”;

21 (B) in paragraphs (1), (2), (3), (4), and
22 (5), by striking “the term” and inserting “The
23 term”;

1 (C) in paragraphs (1), (2), (4), and (5), by
2 striking the semicolon at the end and inserting
3 a period;

4 (D) in paragraph (8), as redesignated by
5 subsection (a)(2)—

6 (i) by striking “the term” and insert-
7 ing “The term”; and

8 (ii) by striking “; and” and inserting
9 a period; and

10 (E) in paragraph (9), as redesignated by
11 subsection (a)(2)—

12 (i) by striking “the term” and insert-
13 ing “The term”; and

14 (ii) by striking “1644” and inserting
15 “1647”; and

16 (4) in section 1647(g) (7 U.S.C. 4906(g)), as
17 amended by subsection (e) and section 205(2)—

18 (A) by striking “that—” and inserting
19 “the following:”;

20 (B) in paragraph (1)—

21 (i) by striking “(1) funds” and insert-
22 ing “(1) Funds”; and

23 (ii) by striking the semicolon at the
24 end and inserting a period;

25 (C) in paragraph (2)—

- 1 (i) by striking “(2) no” and inserting
2 “(2) No”; and
3 (ii) by striking the semicolon at the
4 end and inserting a period; and
5 (D) in paragraph (3)—
6 (i) by striking “(3) no” and inserting
7 “(3) No”; and
8 (ii) by striking “; and” and inserting
9 a period.

10 **SEC. 209. SEPARATE CONSIDERATION OF WATERMELON**
11 **PLAN AMENDMENTS.**

12 Section 1655 of the Watermelon Research and Pro-
13 motion Act (7 U.S.C. 4914) is amended—

14 (1) by inserting “(a)” before “The provisions”;
15 and

16 (2) by adding at the end the following new sub-
17 sections:

18 “(b) The amendments described in subsection (c)
19 that are required to be made by the Secretary to a plan
20 as a result of the amendments made by the Watermelon
21 Research and Promotion Improvement Act shall be subject
22 to separate line item voting and approval in a referendum
23 conducted pursuant to section 1653 before the Secretary
24 alters the plan as in effect on the day before the date of
25 the enactment of such Act.

1 “(c) The amendments referred to in subsection (b)
2 are those amendments required under—

3 “(1) section 207 of the Watermelon Research
4 and Promotion Improvement Act relating to the
5 elimination of the assessment refund; and

6 “(2) section 208 of such Act relating to subject-
7 ing importers to the terms and conditions of the
8 plan.

9 “(d) When conducting the referendum relating to
10 subjecting importers to the terms and conditions of a plan,
11 the Secretary shall include as eligible voters in the referen-
12 dum producers, handlers, and importers who would be
13 subject to the plan if the amendments are approved.”.

14 **TITLE III—FRESH CUT FLOWERS**
15 **AND FRESH CUT GREENS**
16 **PROMOTION AND INFORMA-**
17 **TION**

18 **SEC. 301. SHORT TITLE.**

19 This title may be cited as the “Fresh Cut Flowers
20 and Fresh Cut Greens Promotion and Information Act”.

21 **SEC. 302. FINDINGS AND DECLARATION OF POLICY.**

22 (a) FINDINGS.—Congress finds the following:

23 (1) Fresh cut flowers and fresh cut greens are
24 an integral part of life in the United States, are en-
25 joyed by millions of persons every year for a mul-

1 titude of special purposes (especially important per-
2 sonal events), and contribute a natural and beautiful
3 element to the human environment.

4 (2) Cut flowers and cut greens are produced by
5 many individual producers throughout the United
6 States as well as in other countries, and are handled
7 and marketed by thousands of small-sized and me-
8 dium-sized businesses, and such production, han-
9 dling, and marketing constitute a key segment of the
10 United States horticultural industry and thus a sig-
11 nificant part of the overall agricultural economy of
12 the United States.

13 (3) Handlers play a vital role in the marketing
14 of cut flowers and cut greens in that they purchase
15 most of the cut flowers and cut greens marketed by
16 producers, prepare the cut flowers and cut greens
17 for retail consumption, serve as intermediary be-
18 tween source of product and retailer, otherwise fa-
19 cilitate the entry of cut flowers and cut greens into
20 the current of domestic commerce, and add effi-
21 ciencies to the market process that ensure the avail-
22 ability of a much greater variety of product to retail-
23 ers and consumers.

24 (4) It is widely recognized that it is in the pub-
25 lic interest and important to the agricultural econ-

1 omy of the United States to provide an adequate,
2 steady supply of cut flowers and cut greens at rea-
3 sonable prices to consumers in the United States.

4 (5) Cut flowers and cut greens move in inter-
5 state and foreign commerce, and cut flowers and cut
6 greens that do not move in such channels of com-
7 merce, but only in intrastate commerce, directly af-
8 fect interstate commerce in cut flowers and cut
9 greens.

10 (6) The maintenance and expansion of existing
11 markets and the development of new or improved
12 markets or uses for cut flowers and cut greens are
13 needed to preserve and strengthen the economic via-
14 bility of the domestic cut flowers and cut greens in-
15 dustry for the benefit of producers, handlers, retail-
16 ers, and the entire floral industry.

17 (7) Generic programs of promotion and
18 consumer information can be effective in maintain-
19 ing and developing markets for cut flowers and cut
20 greens, and have the advantage of equally enhancing
21 the market position for all cut flowers and cut
22 greens marketed.

23 (8) Because cut flowers and cut greens produc-
24 ers are primarily agriculture-oriented rather than
25 promotion-oriented, and because the floral marketing

1 industry within the United States is comprised
2 mainly of small-sized and medium-sized businesses,
3 the development and implementation of an adequate
4 and coordinated national program of generic pro-
5 motion and consumer information necessary for the
6 maintenance of existing markets and the develop-
7 ment of new markets for cut flowers and cut greens
8 have been prevented.

9 (9) There exist established State and commod-
10 ity-specific producer-funded programs of promotion
11 and research that are valuable efforts to expand
12 markets for domestic producers of cut flowers and
13 cut greens and that will be able to take advantage
14 of the promotion and consumer information program
15 authorized by this title to enhance their market de-
16 velopment efforts for domestic producers.

17 (10) An effective and coordinated method for
18 ensuring cooperative and collective action in provid-
19 ing for and financing a nationwide program of ge-
20 neric promotion and consumer information is needed
21 to ensure that the cut flowers and cut greens indus-
22 try will be able to provide, obtain, and implement
23 programs of promotion and consumer information
24 necessary to maintain, expand, and develop markets
25 for these articles.

1 (11) The most efficient method of financing a
2 nationwide program of generic promotion and
3 consumer information regarding cut flowers and cut
4 greens is to assess cut flowers and cut greens at the
5 point they are sold by handlers into the retail mar-
6 ket.

7 (b) POLICY AND PURPOSE.—It is declared to be the
8 policy of Congress that it is in the public interest, and
9 it is the purpose of this title, to authorize the establish-
10 ment pursuant to this title of an orderly procedure for
11 the development and financing (through an adequate as-
12 sessment on cut flowers and cut greens sold by handlers
13 to retailers and related entities in the United States) of
14 an effective and coordinated program of generic pro-
15 motion, consumer information, and related research de-
16 signed to strengthen the cut flowers and cut greens indus-
17 try's position in the marketplace and to maintain, develop,
18 and expand markets for cut flowers and cut greens.

19 **SEC. 303. DEFINITIONS.**

20 For purposes of this title:

21 (1) CONSUMER INFORMATION.—The term
22 “consumer information” means any action or pro-
23 gram to provide information to consumers and other
24 persons on appropriate uses under varied cir-

1 cumstances, and on the care and handling, of cut
2 flowers or cut greens.

3 (2) CUT FLOWERS AND CUT GREENS.—

4 (A) IN GENERAL.—The term “cut flowers”
5 includes all flowers cut from growing plants and
6 used as fresh-cut flowers, produced either under
7 cover or in field operations. The term “cut
8 greens” includes all cultivated or noncultivated
9 decorative foliage cut from growing plants and
10 used as fresh-cut decorative foliage (except
11 Christmas trees) produced either under cover or
12 in field operations. Neither term includes foli-
13 age plants, floral supplies, or flowering plants.

14 (B) SUBSTANTIAL PORTION.—In any case
15 in which a handler packages cut flowers or cut
16 greens with hard goods in an article, such as a
17 gift basket or similar presentation, for sale to
18 retailers, the PromoFlor Council may deter-
19 mine, under procedures set out in the order,
20 that the cut flowers or cut greens in the article
21 do not constitute a substantial portion of the
22 value of the article and that, based on such de-
23 termination, the article shall not be treated as
24 an article of cut flowers or cut greens subject
25 to assessment under the order.

1 (3) GROSS SALES PRICE.—The term “gross
2 sales price” means the total amount of the trans-
3 action in a sale of cut flowers or cut greens from a
4 handler to a retailer.

5 (4) HANDLER DEFINITIONS.—

6 (A) QUALIFIED HANDLER.—

7 (i) IN GENERAL.—The term “qualified
8 handler” means a person (including a co-
9 operative) operating in the cut flowers or
10 cut greens marketing system that sells do-
11 mestic or imported cut flowers or cut
12 greens to retailers and exempt handlers
13 and whose annual sales of cut flowers and
14 cut greens to retailers and exempt handlers
15 are \$750,000 or more.

16 (ii) INCLUSIONS.—The term “quali-
17 fied handler” includes—

18 (I) bouquet manufacturers (sub-
19 ject to the “substantial portion” rule
20 under paragraph (2)(B));

21 (II) auction houses that clear
22 sales of cut flowers and cut greens to
23 retailers and exempt handlers through
24 a central clearinghouse; and

1 (III) any distribution center that
2 is owned or controlled by a retailer if
3 the predominant retail business activ-
4 ity of the retailer is floral sales. For
5 purposes of determining sales of cut
6 flowers and cut greens to retailers
7 from any such distribution center,
8 each non-sale transfer to a retailer
9 shall be treated as a sale in an
10 amount calculated as provided in sub-
11 paragraph (C)(ii).

12 (iii) EXCLUSIONS.—The term “quali-
13 fied handler” does not include a person
14 who merely physically transports or deliv-
15 ers cut flowers or cut greens.

16 (iv) RULES OF CONSTRUCTION FOR
17 DIRECT TO CONSUMER SALES.—The term
18 “qualified handler” includes an importer
19 that sells directly to consumers cut flowers
20 or cut greens that it has imported into the
21 United States and whose sales of such cut
22 flowers or cut greens (as calculated under
23 subparagraph (C)), along with sales of cut
24 flowers and cut greens to retailers or ex-
25 empt handlers, annually are \$750,000 or

1 more. The term “qualified handler” also
2 includes a producer that sells directly to
3 consumers cut flowers or cut greens that it
4 has produced and whose sales of such cut
5 flowers or cut greens (as calculated under
6 subparagraph (C)), along with sales of cut
7 flowers and cut greens to retailers or ex-
8 empt handlers, annually are \$750,000 or
9 more. Each direct sale to consumers by
10 any such qualified handler shall be treated
11 as a sale to a retailer or exempt handler in
12 an amount calculated as provided in clause
13 (ii) or (iii) of subparagraph (C).

14 (B) EXEMPT HANDLER.—The term “ex-
15 empt handler” means a person that would oth-
16 erwise be considered to be a qualified handler,
17 except that its annual sales of cut flowers and
18 cut greens to retailers and other exempt han-
19 dlers are less than \$750,000.

20 (C) ANNUAL SALES DETERMINED.—

21 (i) IN GENERAL.—For purposes of de-
22 termining the amount of annual sales of
23 cut flowers and cut greens under subpara-
24 graphs (A) and (B), the amount of a sale

1 shall be determined on the basis of the
2 gross sales price of product sold.

3 (ii) SPECIAL RULE FOR DISTRIBUTION
4 CENTERS.—In the case of a non-sale trans-
5 fer of cut flowers or cut greens from a dis-
6 tribution center, as described in subpara-
7 graph (A)(ii)(III), the amount of the sale
8 shall be—

9 (I) the price paid by the distribu-
10 tion center to acquire the cut flowers
11 or cut greens; plus

12 (II) an amount determined by
13 multiplying acquisition price deter-
14 mined under subclause (I) by a uni-
15 form percentage established by the
16 order to represent a wholesale han-
17 dler's mark-up on a sale to a retailer.

18 (iii) SPECIAL RULE FOR DIRECT
19 SALES BY IMPORTERS.—In the case a di-
20 rect sale by an importer to a consumer, as
21 described in subparagraph (A)(iv), the
22 amount of the sale shall be—

23 (I) the price paid by the importer
24 to acquire the cut flowers or cut
25 greens; plus

1 (II) an amount determined by
2 multiplying the acquisition price de-
3 termined under subclause (I) by a
4 uniform percentage established by the
5 order to represent a wholesale han-
6 dler's mark-up on a sale to a retailer.

7 (iv) SPECIAL RULE FOR DIRECT
8 SALES BY PRODUCERS.—In the case of a
9 direct sale by a producer to a consumer, as
10 described in subparagraph (A)(iv), the
11 amount of the sale shall be an amount de-
12 termined by applying to the price paid by
13 the consumer a uniform percentage estab-
14 lished by the order to represent the cost of
15 producing the article and a wholesale han-
16 dler's mark-up on a sale to a retailer.

17 (D) REFERENCE TO OTHER DEFINI-
18 TIONS.—For purposes of this paragraph, the
19 term “producer” has the meaning given the
20 term “producer that is a qualified handler” in
21 section 305(b)(2)(B)(ii)(I), and the term “im-
22 porter” has the meaning given the term “im-
23 porter that is a qualified handler” in section
24 305(b)(2)(B)(iii)(I).

1 (5) PERSON.—The term “person” means any
2 individual, group of individuals, firm, partnership,
3 corporation, joint stock company, association, soci-
4 ety, cooperative, or other legal entity.

5 (6) PROMOFLO R COUNCIL.—The term
6 “PromoFlor Council” means the Fresh Cut Flowers
7 and Fresh Cut Greens Promotion Council estab-
8 lished under section 305(b).

9 (7) PROMOTION.—The term “promotion”
10 means any action determined by the Secretary to ad-
11 vance the image, desirability, or marketability of cut
12 flowers or cut greens, including paid advertising.

13 (8) RESEARCH.—The term “research” means
14 market research and studies limited to the support
15 of advertising, market development, and other pro-
16 motion efforts and consumer information efforts re-
17 lating to cut flowers or cut greens, including edu-
18 cational activities.

19 (9) RETAILER.—The term “retailer” means a
20 person (such as a retail florist, supermarket, mass
21 market retail outlet, or other end-use seller as de-
22 scribed in an order issued under this title) that sells
23 cut flowers or cut greens to consumers. The term
24 shall include any distribution center—

1 (A) owned or controlled by such person, or
2 owned or controlled cooperatively by a group of
3 such persons, if the predominant retail business
4 activity of such person is not floral sales; or

5 (B) independently owned but operated pri-
6 marily to provide food products to retail stores.

7 An independently owned distribution center covered
8 by subparagraph (B) that is also an importer or pro-
9 ducer of cut flowers or cut greens shall be subject
10 to the rules of construction set out in paragraph
11 (4)(A)(iv) and, for such purposes only, shall be
12 deemed to be the seller of cut flowers or cut greens
13 directly to the consumer.

14 (10) SECRETARY.—The term “Secretary”
15 means the Secretary of Agriculture.

16 (11) UNITED STATES; STATE.—The terms
17 “United States” and “State” include the fifty States
18 of the United States, the District of Columbia, and
19 all the territories and possessions of the United
20 States.

21 **SEC. 304. ISSUANCE OF ORDERS.**

22 (a) IN GENERAL.—To effectuate the declared policy
23 of section 302(b), the Secretary shall issue an order under
24 this title applicable to qualified handlers of cut flowers and
25 cut greens. Any such order shall be national in scope. Not

1 more than one order shall be in effect under this title at
2 any one time.

3 (b) PROCEDURES.—

4 (1) PROPOSAL FOR AN ORDER.—The Secretary
5 may propose the issuance of an order under this
6 title. In addition, an industry group that represents
7 a substantial number of the industry members who
8 are to be assessed under the order, or any other per-
9 son that will be affected by this title, may request
10 the issuance of, and submit a proposal for, such an
11 order.

12 (2) PUBLICATION OF PROPOSAL.—The Sec-
13 retary shall publish the proposed order and give due
14 notice and opportunity for public comment on the
15 proposed order not later than 60 days after the ear-
16 lier of—

17 (A) the date on which the Secretary re-
18 ceives a proposal for an order from an industry
19 group or interested person, as provided in para-
20 graph (1); or

21 (B) the date on which the Secretary deter-
22 mines to propose an order.

23 (3) ISSUANCE OF ORDER.—After notice and op-
24 portunity for public comment are provided, the Sec-
25 retary shall issue the order, taking into consider-

1 ation the comments received and including in the
2 order provisions necessary to ensure that the order
3 is in conformity with the requirements of this title.
4 The order shall be issued and become effective not
5 later than 180 days after publication of the proposed
6 order.

7 (c) AMENDMENTS.—From time to time, the Sec-
8 retary may amend an order issued under this title. The
9 provisions of this title applicable to the issuance of an
10 order shall be applicable to amendments to the order.

11 **SEC. 305. REQUIRED TERMS IN ORDERS.**

12 (a) IN GENERAL.—Each order issued under this title
13 shall contain the terms and provisions required by this sec-
14 tion, sections 306 and 307, and any other provision of this
15 title.

16 (b) PROMOFLOr COUNCIL—

17 (1) ESTABLISHMENT AND MEMBERSHIP.—

18 (A) ESTABLISHMENT.—The order shall
19 provide for the establishment of a Fresh Cut
20 Flowers and Fresh Cut Greens Promotion
21 Council, consisting of twenty one members, to
22 administer the order.

23 (B) MEMBERSHIP.—The order shall pro-
24 vide that members of the PromoFlor Council
25 shall be participating qualified handlers rep-

1 representing qualified wholesale handlers and pro-
2 ducers and importers that are qualified han-
3 dlers, and a member that represents retailers,
4 appointed by the Secretary from nominations
5 submitted by qualified wholesale handlers, pro-
6 ducers and importers that are qualified han-
7 dlers, and retailers, as provided in paragraphs
8 (2) and (3).

9 (2) DISTRIBUTION OF APPOINTMENTS.—

10 (A) IN GENERAL.—The order shall provide
11 that the membership of the PromoFlor Council
12 shall be made up of—

13 (i) fourteen members representing
14 qualified wholesale handlers of domestic or
15 imported cut flowers and cut greens;

16 (ii) three members representing pro-
17 ducers that are qualified handlers of cut
18 flowers and cut greens;

19 (iii) three members representing im-
20 porters that are qualified handlers of cut
21 flowers and cut greens; and

22 (iv) one member representing cut
23 flowers and cut greens retailers.

24 (B) MEANING OF TERMS.—For purposes
25 of this subsection:

1 (i) QUALIFIED WHOLESALE HAN-
2 DLERS.—The term “qualified wholesale
3 handler” means a person in business as a
4 floral wholesale jobber or floral supplier
5 and that is subject to assessments as a
6 qualified handler under the order. For pur-
7 poses of this clause, the term “floral
8 wholesale jobber” means a person that
9 conducts a commission or other wholesale
10 business in buying and selling cut flowers
11 or cut greens, and the term “floral sup-
12 plier” means a person engaged in acquir-
13 ing cut flowers or cut greens to be manu-
14 factured into floral articles or otherwise
15 processed for resale.

16 (ii) PRODUCER THAT IS A QUALIFIED
17 HANDLER.—The term “producer that is a
18 qualified handler” means an entity that—

19 (I) is engaged—

20 (aa) in the domestic produc-
21 tion, for sale in commerce, of cut
22 flowers or cut greens and that
23 owns or shares in the ownership
24 and risk of loss of the cut flowers
25 or cut greens; or

1 (bb) as a first processor of
2 noncultivated cut greens, in re-
3 ceiving the cut greens from the
4 persons that gather them for
5 handling; and

6 (II) is subject to assessments as
7 a qualified handler under the order.

8 (iii) IMPORTER THAT IS A QUALIFIED
9 HANDLER.—The term “importer that is a
10 qualified handler” means an entity—

11 (I) whose principal activity is the
12 importation of cut flowers or cut
13 greens into the United States (either
14 directly or as an agent, broker, or
15 consignee of any person or nation that
16 produces or handles cut flowers or cut
17 greens outside the United States for
18 sale in the United States); and

19 (II) that is subject to assess-
20 ments as a qualified handler under
21 the order.

22 (C) DISTRIBUTION OF QUALIFIED WHOLE-
23 SALE HANDLER APPOINTMENTS.—The order
24 shall provide that the qualified wholesale han-
25 dler appointments made by the Secretary to the

1 PromoFlor Council shall take into account the
2 geographical distribution of cut flowers and cut
3 greens markets in the United States.

4 (3) NOMINATION PROCESS.—The order shall
5 provide that—

6 (A) two nominees be submitted for each
7 appointment to the PromoFlor Council;

8 (B) nominations for each appointment of a
9 qualified wholesale handler, producer that is a
10 qualified handler, or importer that is a qualified
11 handler to the PromoFlor Council shall be
12 made by qualified wholesale handlers, producers
13 that are qualified handlers, or importers that
14 are qualified handlers, respectively, through an
15 election process under regulations prescribed by
16 the Secretary;

17 (C) nominations for the retailer appoint-
18 ment shall be made by the American Floral
19 Marketing Council, or successor entity; and

20 (D) in any case in which qualified whole-
21 sale handlers, producers that are qualified han-
22 dlers, importers that are qualified handlers, or
23 retailers fail to nominate individuals for an ap-
24 pointment to the PromoFlor Council, the Sec-
25 retary may appoint a person to fill the vacancy

1 on a basis provided in the order or other regu-
2 lations of the Secretary.

3 (4) ALTERNATES.—The order shall provide for
4 the selection of alternate members of the PromoFlor
5 Council by the Secretary under procedures specified
6 in the order.

7 (5) TERMS; COMPENSATION.—The order shall
8 provide that—

9 (A) each term of appointment to the
10 PromoFlor Council shall be for three years, ex-
11 cept that, of the initial appointments, one-third
12 shall be for two-year terms, one-third for three-
13 year terms, and one-third for four-year terms;

14 (B) no member of the PromoFlor Council
15 may serve more than two consecutive terms of
16 three years, except that any member serving on
17 initial term of four years may serve an addi-
18 tional term of three years; and

19 (C) PromoFlor Council members shall
20 serve without compensation, but shall be reim-
21 bursed for their expenses incurred in perform-
22 ing their duties as members of the PromoFlor
23 Council.

24 (6) EXECUTIVE COMMITTEE.—

1 (A) ESTABLISHMENT.—The order shall au-
2 thorize the PromoFlor Council to appoint from
3 among its members an executive committee of
4 not more than nine members. The membership
5 of the executive committee initially shall be
6 composed of four members representing quali-
7 fied wholesale handlers, two members represent-
8 ing producers that are qualified handlers, two
9 members representing importers that are quali-
10 fied handlers, and one member representing re-
11 tailers; and thereafter appointments to the exec-
12 utive committee shall be made so as to ensure
13 that the committee reflects, to the maximum
14 extent practicable, the membership composition
15 of the PromoFlor Council as a whole. The ini-
16 tial appointments to the executive committee
17 each shall be for a term of two years. There-
18 after, appointments to the executive committee
19 each shall be for a term of one year.

20 (B) AUTHORITY.—The PromoFlor Council
21 may delegate to the executive committee its au-
22 thority under the order to hire and manage
23 staff and conduct the routine business of the
24 PromoFlor Council within the policies deter-
25 mined by the PromoFlor Council.

1 (c) GENERAL RESPONSIBILITIES OF THE
2 PROMOFLOr COUNCIL.—The order shall define the gen-
3 eral responsibilities of the PromoFlor Council, which shall
4 include the responsibility—

5 (1) to administer the order in accordance with
6 its terms and provisions;

7 (2) to make rules and regulations to effectuate
8 the terms and provisions of the order;

9 (3) to appoint members of the PromoFlor
10 Council to serve on an executive committee;

11 (4) to employ such persons as the PromoFlor
12 Council determines are necessary, and to set the
13 compensation and define the duties of such persons;

14 (5) to develop budgets for the implementation
15 of the order and submit such budgets to the Sec-
16 retary for approval under subsection (d);

17 (6) to propose and develop (or receive and
18 evaluate), approve, and submit to the Secretary for
19 approval under subsection (d) plans and projects for
20 cut flowers or cut greens promotion, consumer infor-
21 mation, or related research;

22 (7) to implement plans and projects for cut
23 flowers or cut greens promotion, consumer informa-
24 tion, or related research, as provided in subsection
25 (d), or to contract or enter into agreements with ap-

1 appropriate persons to implement such plans and
2 projects, as provided in subsection (e), and to pay
3 the costs of such implementation, or contracts and
4 agreements, with funds received under the order;

5 (8) to evaluate on-going and completed plans
6 and projects for cut flowers or cut greens promotion,
7 consumer information, or related research;

8 (9) to receive, investigate, and report to the
9 Secretary complaints of violations of the order;

10 (10) to recommend to the Secretary amend-
11 ments to the order; and

12 (11) to furnish the Secretary with such infor-
13 mation as the Secretary may require.

14 (d) BUDGETS; PLANS AND PROJECTS.—

15 (1) SUBMISSION OF BUDGETS.—The order shall
16 require the PromoFlor Council to submit to the Sec-
17 retary for approval budgets on a fiscal year basis of
18 its anticipated expenses and disbursements in the
19 implementation of the order, including projected
20 costs of cut flowers and cut greens promotion,
21 consumer information, and related research plans
22 and projects.

23 (2) PLANS OR PROJECTS.—

24 (A) PROMOTION AND CONSUMER INFORMA-
25 TION.—The order shall provide—

1 (i) for the establishment, implementa-
2 tion, administration, and evaluation of ap-
3 propriate plans and projects for advertis-
4 ing, sales promotion, other promotion, and
5 consumer information with respect to cut
6 flowers and cut greens, and for the dis-
7 bursement of necessary funds for such pur-
8 poses;

9 (ii) that any such plan or project shall
10 be directed toward increasing the general
11 demand for cut flowers or cut greens and
12 may make no reference to a private brand
13 or trade name, point of origin, or source of
14 supply, except that these limitations shall
15 not preclude the PromoFlor Council from
16 offering its plans and projects for use by
17 commercial parties, under terms and con-
18 ditions prescribed by the PromoFlor Coun-
19 cil and approved by the Secretary; and

20 (iii) that no such plan or project may
21 make use of unfair or deceptive acts or
22 practices with respect to quality or value.

23 (B) RESEARCH.—The order shall provide
24 for the establishment, implementation, adminis-
25 tration, and evaluation of plans and projects for

1 market development research, research with re-
2 spect to the sale, distribution, marketing, or use
3 of cut flowers or cut greens, and other research
4 with respect to cut flowers or cut greens mar-
5 keting, promotion, or consumer information; for
6 the dissemination of the information gained by
7 such activities; and for the disbursement of nec-
8 essary funds for such purposes.

9 (C) SUBMISSION TO SECRETARY.—The
10 order shall provide that the PromoFlor Council
11 shall submit to the Secretary for approval any
12 proposed plan or project for cut flowers or cut
13 greens promotion, consumer information, or re-
14 lated research, as described in subparagraphs
15 (A) and (B).

16 (3) APPROVAL BY SECRETARY REQUIRED.—No
17 budget, or plan or project for cut flowers or cut
18 greens promotion, consumer information, or related
19 research, shall be implemented prior to its approval
20 by the Secretary.

21 (4) INVESTMENT AUTHORITY.—The order shall
22 provide the PromoFlor Council with the authority to
23 invest, pending disbursement under a plan or
24 project, funds collected through assessments author-
25 ized under this title. Income from invested funds

1 shall be used only for a purpose for which the in-
2 vested funds may be used. The investment of such
3 funds shall be made only in—

4 (A) obligations of the United States or any
5 agency thereof;

6 (B) general obligations of any State or any
7 political subdivision thereof;

8 (C) any interest-bearing account or certifi-
9 cate of deposit of a bank that is a member of
10 the Federal Reserve System; or

11 (D) obligations fully guaranteed as to prin-
12 cipal and interest by the United States.

13 (e) CONTRACTS AND AGREEMENTS.—

14 (1) PROMOTION, CONSUMER INFORMATION, AND
15 RELATED RESEARCH PLANS AND PROJECTS.—

16 (A) IN GENERAL.—To ensure efficient use
17 of funds, the order shall provide that the
18 PromoFlor Council, with the approval of the
19 Secretary, may enter into contracts or agree-
20 ments for the implementation of any plan or
21 project for promotion, consumer information, or
22 related research with respect to cut flowers or
23 cut greens, and for the payment of the cost
24 thereof with funds received by the PromoFlor
25 Council under the order.

1 (B) REQUIREMENTS.—The order shall pro-
2 vide that any such contract or agreement shall
3 provide that—

4 (i) the contracting or agreeing party
5 shall develop and submit to the PromoFlor
6 Council a plan or project together with a
7 budget or budgets that shall show esti-
8 mated costs to be incurred under the plan
9 or project;

10 (ii) the plan or project shall become
11 effective on the approval of the Secretary;
12 and

13 (iii) the contracting or agreeing party
14 shall keep accurate records of all of its
15 transactions, account for funds received
16 and expended, make periodic reports to the
17 PromoFlor Council of activities conducted,
18 and make such other reports as the
19 PromoFlor Council or the Secretary may
20 require.

21 (2) OTHER CONTRACTS AND AGREEMENTS.—

22 The order shall provide that the PromoFlor Council
23 also may enter into contracts or agreements for ad-
24 ministrative services. Any such contract or agree-
25 ment shall include provisions comparable to those

1 provided in clauses (i), (ii), or (iii) of paragraph
2 (1)(B).

3 (f) BOOKS AND RECORDS OF THE PROMOFLO
4 R COUNCIL.—

5 (1) IN GENERAL.—The order shall require the
6 PromoFlor Council to—

7 (A) maintain such books and records
8 (which shall be available to the Secretary for in-
9 spection and audit) as the Secretary may pre-
10 scribe;

11 (B) prepare and submit to the Secretary,
12 from time to time, such reports as the Sec-
13 retary may prescribe; and

14 (C) account for the receipt and disburse-
15 ment of all funds entrusted to the PromoFlor
16 Council.

17 (2) AUDITS.—The PromoFlor Council shall
18 cause its books and records to be audited by an
19 independent auditor at the end of each fiscal year.
20 A report of each such audit shall be submitted to the
21 Secretary.

22 (g) CONTROL OF ADMINISTRATIVE COSTS.—The
23 order shall provide that the PromoFlor Council shall, as
24 soon as practicable after the order becomes effective and
25 after consultation with the Department of Agriculture and

1 other appropriate persons, implement a system of cost
2 controls based on normally accepted business practices
3 that will ensure that the PromoFlor Council's annual
4 budgets only include amounts for administrative expenses
5 that cover the minimum administrative activities and per-
6 sonnel needed to properly administer and enforce the
7 order and conduct, supervise, and evaluate plans and
8 projects under the order.

9 (h) PROHIBITION.—The order shall prohibit the use
10 of any funds received by the PromoFlor Council in any
11 manner for the purpose of influencing legislation or gov-
12 ernment action or policy, except that such funds may be
13 used by the PromoFlor Council for the development and
14 recommendation to the Secretary of amendments to the
15 order.

16 (i) BOOKS AND RECORDS; REPORTS.—

17 (1) IN GENERAL.—The order shall provide that
18 each qualified handler shall maintain, and make
19 available for inspection, such books and records as
20 may be required by the order and file reports at the
21 time, in the manner, and having the content pre-
22 scribed by the order, to the end that information is
23 made available to the Secretary and the PromoFlor
24 Council as is appropriate for the administration or

1 enforcement of this title, the order, or any regulation
2 issued under this title.

3 (2) CONFIDENTIALITY REQUIRED.—

4 (A) IN GENERAL.—Information obtained
5 from books, records, or reports under the au-
6 thority provided in paragraph (1), or from re-
7 ports required under section 307(c), shall be
8 kept confidential by all officers and employees
9 of the Department of Agriculture and by the
10 staff and agents of the PromoFlor Council, and
11 only such information so obtained as the Sec-
12 retary considers relevant may be disclosed to
13 the public by them and then only in a suit or
14 administrative hearing brought at the request
15 of the Secretary, or to which the Secretary or
16 any officer of the United States is a party, and
17 involving the order.

18 (B) RULE OF CONSTRUCTION.—Nothing in
19 subparagraph (A) may be construed to pro-
20 hibit—

21 (i) the issuance of general statements,
22 based on the reports, of the number of per-
23 sons subject to the order or statistical data
24 collected therefrom, which statements do

1 not identify the information furnished by
2 any person; or

3 (ii) the publication, by direction of the
4 Secretary, of the name of any person vio-
5 lating the order, together with a statement
6 of the particular provisions of the order
7 violated by the person.

8 (3) LISTS OF IMPORTERS.—The order shall re-
9 quire the staff of the PromoFlor Council to periodi-
10 cally review lists of importers of cut flowers and cut
11 greens to determine whether persons included in the
12 lists are subject to the order. At the request of the
13 PromoFlor Council, the United States Customs
14 Service shall provide to the PromoFlor Council lists
15 of importers of cut flowers and cut greens.

16 (j) CONSULTATIONS WITH INDUSTRY EXPERTS.—
17 The order shall provide that the PromoFlor Council, from
18 time to time, may seek advice from and consult with ex-
19 perts from the production, import, wholesale, and retail
20 segments of the cut flowers and cut greens industry to
21 assist in the development of promotion, consumer informa-
22 tion, and related research plans and projects. For such
23 purpose, the order also shall authorize the appointment
24 of special committees composed of persons other than
25 PromoFlor Council members. A committee appointed pur-

1 suant to the authority provided in this subsection may not
2 provide advice or recommendations to an agency or officer
3 of the Federal Government, but shall consult directly with
4 the PromoFlor Council.

5 **SEC. 306. ASSESSMENTS.**

6 (a) AUTHORITY TO IMPOSE ASSESSMENT.—

7 (1) IN GENERAL.—An order issued under this
8 title shall provide that each qualified handler shall
9 pay to the PromoFlor Council, in the manner pre-
10 scribed by the order, an assessment on each sale of
11 cut flowers or cut greens (other than a sale de-
12 scribed in subsection (h)) to a retailer or an exempt
13 handler. This assessment requirement shall also
14 apply to each transaction described in paragraph
15 (4).

16 (2) DETERMINATION OF QUALIFIED HANDLER
17 OR EXEMPT HANDLER STATUS.—The order shall
18 contain provisions regarding the making of deter-
19 minations to determine status as a qualified handler
20 or exempt handler that include the rules and re-
21 quirements set out in sections 303(4) and 307.

22 (3) PUBLISHED LISTS OF HANDLERS.—To fa-
23 cilitate the payment of assessments under this sec-
24 tion, the PromoFlor Council shall publish lists of

1 qualified handlers required to pay assessments under
2 the order and exempt handlers.

3 (4) COVERED TRANSACTIONS.—

4 (A) IN GENERAL.—The order shall provide
5 that each non-sale transfer of cut flowers or cut
6 greens to a retailer from a qualified handler
7 that is a distribution center, as described in
8 section 303(4)(A)(ii)(III), and each direct sale
9 of cut flowers or cut greens to a consumer by
10 a qualified handler that is an importer or pro-
11 ducer, as described in section 303(4)(A)(iv),
12 shall be treated as a sale of cut flowers or cut
13 greens to a retailer subject to assessments
14 under this subsection.

15 (B) DETERMINATION OF SALE AMOUNT
16 FOR DISTRIBUTION CENTERS.—In the case of a
17 non-sale transfer of cut flowers or cut greens
18 from a distribution center, the amount of the
19 sale shall be considered to be—

20 (i) the price paid by the distribution
21 center to acquire the cut flowers or cut
22 greens; plus

23 (ii) an amount determined by mul-
24 tiplying acquisition price determined under
25 clause (i) by a uniform percentage estab-

1 lished by the order to represent a wholesale
2 handler's mark-up on a sale to a retailer.

3 (C) DETERMINATION OF SALE AMOUNT
4 FOR DIRECT SALES BY IMPORTERS.—In the
5 case a direct sale by an importer to a consumer,
6 the amount of the sale shall be considered to
7 be—

8 (i) the price paid by the importer to
9 acquire the cut flowers or cut greens; plus

10 (ii) an amount determined by mul-
11 tiplying the acquisition price determined
12 under clause (i) by a uniform percentage
13 established by the order to represent a
14 wholesale handler's mark-up on a sale to a
15 retailer.

16 (D) DETERMINATION OF SALE AMOUNT
17 FOR DIRECT SALES BY PRODUCERS.—In the
18 case a direct sale by a producer to a consumer,
19 the amount of the sale shall be considered to be
20 an amount determined by applying to the price
21 paid by the consumer a uniform percentage es-
22 tablished by the order to represent the cost of
23 producing the article and a wholesale handler's
24 mark-up on a sale to a retailer.

1 (E) ADJUSTMENT OF UNIFORM PERCENT-
2 AGE.—The PromoFlor Council may recommend
3 to the Secretary changes to the uniform per-
4 centage established by the order under this
5 paragraph. The Secretary may make a change
6 in the uniform percentage based on such a rec-
7 ommendation only after providing an oppor-
8 tunity for notice and comment regarding the
9 proposed change.

10 (b) ASSESSMENT RATES.—The order shall comply
11 with the following assessment requirements:

12 (1) INITIAL ASSESSMENT RATE.—The rate of
13 assessment on each sale or transfer of cut flowers or
14 cut greens, for the first three years the order is in
15 effect, shall be one-half of one percent of—

16 (A) the gross sales price of product sold; or

17 (B) in the case of transactions described in
18 subsection (a)(4), the amount of the transaction
19 calculated as provided in such subsection.

20 (2) CHANGES IN ASSESSMENT RATE.—

21 (A) AUTHORIZED AMOUNT OF CHANGE.—

22 Subject to subparagraph (B), after the first
23 three years the order is in effect, the uniform
24 assessment rate may be increased or decreased
25 annually by not more than .25 percent of—

1 (i) the gross sales price of product
2 sold; or

3 (ii) in the case of transactions de-
4 scribed in subsection (a)(4), the amount of
5 the transaction calculated as provided in
6 such subsection.

7 (B) LIMITATION.—The assessment rate
8 may not exceed one percent of gross sales price
9 or transaction amount.

10 (C) METHOD OF CHANGING ASSESSMENT
11 AMOUNT.—Any change in the rate of assess-
12 ment may be made only if adopted by the
13 PromoFlor Council by a two-thirds majority
14 vote and approved by the Secretary, after pro-
15 viding an opportunity for notice and comment
16 regarding the proposed change, as necessary to
17 achieve the objectives of this title. The change
18 in the rate of assessment shall be announced by
19 the PromoFlor Council at least 30 days prior to
20 going into effect. A change in the rate of as-
21 sessment shall not be subject to a vote in a ref-
22 erendum under section 308.

23 (c) SUBMISSION OF ASSESSMENTS.—The order shall
24 provide that each person required to pay assessments
25 under this section shall remit, to the PromoFlor Council,

1 the assessment due from each sale by that person of cut
2 flowers or cut greens that is subject to an assessment
3 within such time period after the sale (not to exceed 60
4 days from the end of the month in which the sale took
5 place) as specified in the order.

6 (d) REFUNDS FROM ESCROW ACCOUNT.—

7 (1) ESTABLISHMENT OF ESCROW ACCOUNT.—

8 The order shall provide that the PromoFlor Council
9 shall—

10 (A) establish an escrow account to be used
11 for assessment refunds as needed; and

12 (B) place into the escrow account an
13 amount equal to 10 percent of the total amount
14 of assessments collected during the period be-
15 ginning on the date the order goes into effect,
16 as provided in section 304(b)(3), and ending on
17 the date the initial referendum on the order
18 provided for in section 308(a) is completed.

19 (2) RIGHT TO RECEIVE REFUND.—

20 (A) IN GENERAL.—The order shall provide
21 that, subject to paragraph (3) and the condi-
22 tions specified in subparagraph (B), any quali-
23 fied handler shall have the right to demand and
24 receive from the PromoFlor Council out of the
25 escrow account a one-time refund of any assess-

1 ments paid by or on behalf of the qualified han-
2 dler during the time period specified in para-
3 graph (1)(B), if—

4 (i) the qualified handler is required to
5 pay such assessments;

6 (ii) the qualified handler does not sup-
7 port the program established under this
8 title;

9 (iii) the qualified handler demands a
10 refund prior to the conduct of the referen-
11 dum on the order under section 308(a);
12 and

13 (iv) the order is not approved by
14 qualified handlers in the referendum.

15 (B) CONDITIONS.—The right of any quali-
16 fied handler to receive refunds under subpara-
17 graph (A) shall be subject to the following con-
18 ditions:

19 (i) The demand shall be made in ac-
20 cordance with regulations, on a form, and
21 within a time period prescribed by the
22 PromoFlor Council.

23 (ii) The refund shall be made only on
24 submission of proof satisfactory to the
25 PromoFlor Council that the qualified han-

1 dler paid the assessment for which refund
2 is demanded.

3 (iii) If the amount in the escrow ac-
4 count required under paragraph (1) is not
5 sufficient to refund the total amount of as-
6 sessments demanded by all qualified han-
7 dlers determined eligible for refunds and
8 the order is not approved in the referen-
9 dum on the order under section 308(a),
10 the PromoFlor Council shall prorate the
11 amount of all such refunds among all eligi-
12 ble qualified handlers that demand a re-
13 fund.

14 (3) PROGRAM APPROVED.—The order shall pro-
15 vide that, if the order is approved in the referendum
16 under section 308(a), there shall be no refunds made
17 and all funds in the escrow account shall be re-
18 turned to the PromoFlor Council for use by the
19 PromoFlor Council in accordance with the other pro-
20 visions of the order.

21 (e) USE OF ASSESSMENT FUNDS.—The order shall
22 provide that assessment funds (net of any refunds paid
23 out under the terms of the order contained in subsection
24 (d)) shall be used for payment of costs incurred in imple-
25 menting and administering the order, with provision for

1 a reasonable reserve, and to cover those administrative
2 costs incurred by the Secretary in implementing and ad-
3 ministering this title, except for the salaries of Govern-
4 ment employees incurred in conducting referenda.

5 (f) POSTPONEMENT OF COLLECTIONS.—

6 (1) AUTHORITY.—Notwithstanding any other
7 provision of this title, the PromoFlor Council may
8 grant a postponement of the payment of assessments
9 under this section for any qualified handler that es-
10 tablishes that it is financially unable to make the
11 payment. The granting of such a postponement shall
12 be considered under application and documentation
13 requirements and review procedures established
14 under rules recommended by the PromoFlor Council,
15 approved by the Secretary, and issued after provid-
16 ing public notice and an opportunity to comment on
17 the proposed rules.

18 (2) CRITERIA AND RESPONSIBILITY FOR DE-
19 TERMINATIONS.—To establish that it is financially
20 unable to pay assessments, an applicant for a post-
21 ponement shall demonstrate that it is insolvent and
22 will be unable to continue to operate if it is required
23 to pay assessments. As part of making such a dem-
24 onstration, the applicant shall submit an opinion of
25 an independent certified public accountant and any

1 other documentation required under the rules pre-
2 scribed under paragraph (1). All books, records, and
3 other documentation submitted by a qualified han-
4 dler under this paragraph shall be subject to the
5 confidentiality requirements of section 505(i).

6 (3) PERIOD OF POSTPONEMENT.—The time pe-
7 riod of any postponement and the terms and condi-
8 tions of payment of assessments that are postponed
9 under this subsection shall be established by the
10 PromoFlor Council, in accordance with the rules
11 prescribed under paragraph (1), so as to appro-
12 priately reflect the proven needs of the qualified
13 handler. Postponements may be extended under the
14 requirements and procedures established pursuant to
15 paragraph (1) for the grant of initial postponements.

16 (g) OTHER TERMS OF ORDER.—The order shall con-
17 tain such other terms and provisions, not inconsistent with
18 this title, as are necessary to effectuate this title, including
19 provision for the assessment of interest and a charge for
20 each late payment of assessments under this section.

21 (h) EXCLUSION FROM ASSESSMENTS.—The order
22 shall exclude from assessments under the order any sale
23 of cut flowers or cut greens for export from the United
24 States.

1 **SEC. 307. REQUIRED DETERMINATIONS.**

2 (a) DETERMINATION OF ANNUAL SALES.—

3 (1) IN GENERAL.—For purposes of applying the
4 \$750,000 annual sales limitation to specific persons
5 in order to determine status as a qualified handler
6 or an exempt handler under section 303(4), or to
7 specific facilities in order to determine status as an
8 eligible separate facility under section 308(b)(2), any
9 order issued under this title shall provide that a de-
10 termination of a person's or facility's annual sales
11 volume shall be based on the sales of cut flowers and
12 cut greens by the person or facility during the most
13 recently-completed calendar year.

14 (2) SPECIAL RULE FOR NEW BUSINESSES.—

15 With respect to new businesses and other operations
16 for which complete data on sales during all or part
17 of the most recently-completed calendar year are not
18 available to the PromoFlor Council, the determina-
19 tion under paragraph (1) may be made using an al-
20 ternative time period or other alternative procedures
21 specified in the order.

22 (b) RULE OF ATTRIBUTION.—

23 (1) IN GENERAL.—For purposes of determining
24 the annual sales volume of a person or a separate
25 facility of a person, sales attributable to a person
26 shall include—

1 (A) in those cases in which the person is
2 an individual, sales attributable to such per-
3 son's spouse, children, grandchildren, parents,
4 and grandparents;

5 (B) in those cases in which the person is
6 a partnership or member of a partnership, sales
7 attributable to the partnership and other part-
8 ners of the partnership;

9 (C) for both individuals and partnerships,
10 sales attributable to any corporation or other
11 entity in which the person owns more than 50
12 percent of the stock or (if the entity is not a
13 corporation) that the person controls; and

14 (D) in those cases in which the person is
15 a corporation, sales attributable to any cor-
16 porate subsidiary or other corporation or entity
17 in which the corporation owns more than 50
18 percent of the stock or (if the entity is not a
19 corporation) that the corporation controls.

20 (2) TREATMENT OF CERTAIN STOCK AND OWN-
21 ERSHIP INTERESTS.—For purposes of this sub-
22 section, stock or an ownership interest in an entity
23 that is owned by the spouse, children, grandchildren,
24 parents, grandparents, or partners of an individual,
25 or by a partnership in which a person is a partner,

1 or by a corporation more than 50 percent of the
2 stock of which is owned by a person, shall be treated
3 as owned by the individual or person.

4 (c) REPORTS.—For purposes of this section, the
5 order may require each person that sells cut flowers or
6 cut greens to retailers to submit reports to the PromoFlor
7 Council on annual sales by the person. A report under this
8 subsection shall be subject to the confidentiality require-
9 ments provided in section 305(i)(2).

10 **SEC. 308. REFERENDA.**

11 (a) REQUIREMENT FOR INITIAL REFERENDUM.—

12 (1) CONDUCT.—Not later than 36 months after
13 the issuance of an order under section 304(b)(3),
14 the Secretary shall conduct a referendum among
15 qualified handlers required to pay assessments under
16 the order, as provided in section 306, subject to the
17 rules on voting provided in subsection (b), to ascer-
18 tain whether or not the order then in effect shall be
19 continued.

20 (2) APPROVAL OF ORDER NEEDED.—The order
21 shall be continued only if the Secretary determines
22 that the order has been approved by a simple major-
23 ity of all votes cast in the referendum. If the order
24 is not approved, the Secretary shall terminate the
25 order as provided in subsection (d).

1 (b) VOTES PERMITTED.—

2 (1) IN GENERAL.—Each qualified handler eligi-
3 ble to vote in a referendum under this section shall
4 be entitled to cast one vote for each separate facility
5 of the person that is an eligible separate facility, as
6 defined in paragraph (2).

7 (2) ELIGIBLE SEPARATE FACILITY.—

8 (A) SEPARATE FACILITY.—A handling or
9 marketing facility of a qualified handler shall be
10 considered a separate facility if it is physically
11 located away from other facilities of the quali-
12 fied handler or its business function is substan-
13 tially different than the functions of other fa-
14 cilities owned or operated by the qualified han-
15 dler.

16 (B) ELIGIBILITY.—A separate facility of a
17 qualified handler shall be considered to be an
18 eligible separate facility if the annual sales of
19 cut flowers and cut greens to retailers and ex-
20 empt handlers from the facility are \$750,000 or
21 more.

22 (C) ANNUAL SALES DETERMINED.—For
23 purposes of determining the amount of annual
24 sales of cut flowers and cut greens under sub-
25 paragraph (B) of this paragraph, the rules set

1 out in subparagraphs (A) and (C) of section
2 303(4) shall be applicable.

3 (c) SUSPENSION OR TERMINATION REFERENDA.—
4 Effective beginning three years after an order issued
5 under this title is approved in a referendum conducted
6 under subsection (a), the Secretary—

7 (1) at the Secretary's discretion, may conduct
8 at any time a referendum of qualified handlers re-
9 quired to pay assessments under the order, as pro-
10 vided in section 306, subject to the rules on voting
11 provided in subsection (b), to ascertain whether or
12 not qualified handlers favor suspension or termi-
13 nation of the order; and

14 (2) whenever requested by the PromoFlor
15 Council or by a representative group comprising
16 thirty percent or more of all qualified handlers re-
17 quired to pay assessments under the order, as pro-
18 vided in section 306, shall conduct a referendum of
19 all qualified handlers required to pay assessments
20 under the order, as provided in section 306, subject
21 to the rules on voting provided in subsection (b), to
22 ascertain whether or not qualified handlers favor
23 suspension or termination of the order.

24 (d) SUSPENSION OR TERMINATION.—If, as a result
25 of the referendum conducted under subsection (a)(2), the

1 Secretary determines that the order has not been approved
2 by a simple majority of all votes cast in the referendum,
3 or as a result of a referendum conducted under subsection
4 (c), the Secretary determines that suspension or termi-
5 nation of the order is favored by a simple majority of all
6 votes cast in the referendum, the Secretary shall—

7 (1) within six months after the referendum,
8 suspend or terminate, as appropriate, collection of
9 assessments under the order; and

10 (2) suspend or terminate, as appropriate, activi-
11 ties under the order in an orderly manner as soon
12 as practicable.

13 (e) MANNER OF CONDUCTING REFERENDA.—
14 Referenda under this section shall be conducted in such
15 manner as is determined appropriate by the Secretary.

16 **SEC. 309. PETITION AND REVIEW.**

17 (a) PETITION AND HEARING.—

18 (1) PETITION.—A person subject to an order
19 issued under this title may file with the Secretary a
20 petition—

21 (A) stating that the order, any provision of
22 the order, or any obligation imposed in connec-
23 tion with the order is not in accordance with
24 law; and

1 (B) requesting a modification of the order
2 or an exemption from the order.

3 (2) HEARING.—The petitioner shall be given
4 the opportunity for a hearing on a petition filed
5 under paragraph (1), in accordance with regulations
6 issued by the Secretary. Any such hearing shall be
7 conducted in accordance with section 311(b)(2) and
8 be held within the United States judicial district in
9 which the person's residence or principal place of
10 business is located.

11 (3) RULING.—After a hearing under paragraph
12 (2), the Secretary shall make a ruling on the peti-
13 tion, which shall be final if in accordance with law.

14 (b) REVIEW.—

15 (1) COMMENCEMENT OF ACTION.—The district
16 courts of the United States in any district in which
17 a person that is a petitioner under subsection (a) re-
18 sides or carries on business are hereby vested with
19 jurisdiction to review the Secretary's ruling on the
20 person's petition, if a complaint for that purpose is
21 filed within 20 days after the date of the entry of
22 the ruling by the Secretary.

23 (2) PROCESS.—Service of process in proceed-
24 ings under this subsection shall be conducted in ac-
25 cordance with the Federal Rules of Civil Procedure.

1 (3) REMAND.—If the court in a proceeding
2 under this subsection determines that the Sec-
3 retary’s ruling on the person’s petition is not in ac-
4 cordance with law, the court shall remand the mat-
5 ter to the Secretary with directions either—

6 (A) to make such ruling as the court shall
7 determine to be in accordance with law; or

8 (B) to take such further action as, in the
9 opinion of the court, the law requires.

10 (c) ENFORCEMENT UNDER SECTION 310.—The
11 pendency of proceedings instituted under this section shall
12 not impede, hinder, or delay the Attorney General or the
13 Secretary from obtaining relief under section 310.

14 **SEC. 310. ENFORCEMENT.**

15 (a) JURISDICTION.—The several district courts of the
16 United States are vested with jurisdiction specifically to
17 enforce, and to prevent and restrain any person from vio-
18 lating, this title or an order or regulation made or issued
19 by the Secretary under this title.

20 (b) REFERRAL TO ATTORNEY GENERAL.—A civil ac-
21 tion brought under subsection (a) shall be referred to the
22 Attorney General for appropriate action, except that the
23 Secretary is not required to refer to the Attorney General
24 a violation of this title, or an order or regulation issued
25 under this title, if the Secretary believes that the adminis-

1 tration and enforcement of this title would be adequately
2 served by administrative action under subsection (c) or
3 suitable written notice or warning to the person who com-
4 mitted or is committing the violation.

5 (c) CIVIL PENALTIES AND ORDERS.—

6 (1) CIVIL PENALTIES.—A person that violates a
7 provision of this title, or an order or regulation is-
8 sued by the Secretary under this title, or who fails
9 or refuses to pay, collect, or remit any assessment
10 or fee duly required of the person under an order or
11 regulation issued under this title, may be assessed
12 by the Secretary—

13 (A) a civil penalty of not less than \$500
14 nor more than \$5,000 for each such violation;
15 and

16 (B) in the case of a willful failure to remit
17 an assessment as required by an order or regu-
18 lation, an additional penalty equal to the
19 amount of the assessment.

20 (2) TREATMENT AS SEPARATE OFFENSES.—

21 Each violation described in paragraph (1) shall be
22 treated as a separate offense.

23 (3) CEASE AND DESIST ORDERS.—In addition
24 to or in lieu of a civil penalty under paragraph (1),
25 the Secretary may issue an order requiring a person

1 to cease and desist from continuing a violation of
2 this title or an order or regulation issued under this
3 title.

4 (4) NOTICE AND HEARING.—No penalty shall
5 be assessed or cease and desist order issued by the
6 Secretary under this subsection unless the Secretary
7 gives the person against whom the penalty is as-
8 sessed or the order is issued notice and opportunity
9 for a hearing before the Secretary with respect to
10 the violation. The hearing shall be conducted in ac-
11 cordance with section 311(b)(2) and be held within
12 the United States judicial district in which the per-
13 son's residence or principal place of business is lo-
14 cated.

15 (5) FINALITY.—The penalty assessed or cease
16 and desist order issued under this subsection shall
17 be final and conclusive unless the person against
18 whom the penalty is assessed or the order is issued
19 files an appeal with the appropriate district court of
20 the United States in accordance with subsection (d).

21 (d) REVIEW BY DISTRICT COURT.—

22 (1) COMMENCEMENT OF ACTION.—Any person
23 against whom a violation is found and a civil penalty
24 assessed or cease and desist order issued under sub-

1 section (c) may obtain review of the penalty or order
2 by—

3 (A) filing, within the 30-day period begin-
4 ning on the date the penalty is assessed or
5 order issued, a notice of appeal in the district
6 court of the United States for the district in
7 which the person resides or carries on business,
8 or in the United States district court for the
9 District of Columbia; and

10 (B) simultaneously sending a copy of the
11 notice by certified mail to the Secretary.

12 (2) FILING OF RECORD.—Upon the filing of a
13 notice of appeal under paragraph (1), the Secretary
14 shall promptly file in the district court in which the
15 notice of appeal is filed a certified copy of the record
16 on which the Secretary found that the person had
17 committed a violation.

18 (3) STANDARD OF REVIEW.—A finding of the
19 Secretary shall be set aside under this subsection
20 only if the finding is found to be unsupported by
21 substantial evidence.

22 (e) FAILURE TO OBEY AN ORDER.—A person that
23 fails to obey a cease and desist order issued under sub-
24 section (c) after the order has become final and
25 unappealable, or after the appropriate United States dis-

1 trict court has entered a final judgment in favor of the
2 Secretary, shall be subject to a civil penalty assessed by
3 the Secretary of not more than \$5,000 for each offense,
4 after opportunity for a hearing and for judicial review
5 under the procedures specified in subsections (c) and (d).
6 Each day during which the failure continues shall be con-
7 sidered as a separate violation of the order.

8 (f) FAILURE TO PAY A PENALTY.—If a person fails
9 to pay a civil penalty assessed under subsection (c) or (e)
10 after the penalty has become final and unappealable, or
11 after the appropriate United States district court has en-
12 tered final judgment in favor of the Secretary, the Sec-
13 retary shall refer the matter to the Attorney General for
14 recovery of the amount assessed in any United States dis-
15 trict court in which the person resides or carries on busi-
16 ness. In such action, the validity and appropriateness of
17 the civil penalty shall not be subject to review.

18 (g) ADDITIONAL REMEDIES.—The remedies provided
19 in this title shall be in addition to, and not exclusive of,
20 other remedies that may be available.

21 **SEC. 311. INVESTIGATIONS AND POWER TO SUBPOENA.**

22 (a) INVESTIGATIONS.—The Secretary may make such
23 investigations as the Secretary considers necessary for the
24 effective administration of this title, or to determine
25 whether any person has engaged or is engaging in any

1 act that constitutes a violation of this title, or any order
2 or regulation issued under this title.

3 (b) SUBPOENAS, OATHS, AND AFFIRMATIONS.—

4 (1) IN GENERAL.—For the purpose of an inves-
5 tigation under subsection (a), the Secretary may ad-
6 minister oaths and affirmations, and issue subpoe-
7 nas to require the production of any records that are
8 relevant to the inquiry. The production of any such
9 records may be required from any place in the Unit-
10 ed States.

11 (2) ADMINISTRATIVE HEARINGS.—For the pur-
12 pose of an administrative hearing held under section
13 309(a)(2) or 310(c)(3), the presiding officer may ad-
14 minister oaths and affirmations, subpoena witnesses,
15 compel their attendance, take evidence, and require
16 the production of any records that are relevant to
17 the inquiry. The attendance of witnesses and the
18 production of any such records may be required
19 from any place in the United States.

20 (c) AID OF COURTS.—

21 (1) IN GENERAL.—In the case of contumacy by,
22 or refusal to obey a subpoena issued to, any person,
23 the Secretary may invoke the aid of any court of the
24 United States within the jurisdiction of which the in-
25 vestigation or proceeding is carried on, or where the

1 person resides or carries on business, in order to en-
2 force a subpoena issued under subsection (b). The
3 court may issue an order requiring the person to
4 comply with such a subpoena. Any failure to obey
5 the order of the court may be punished by the court
6 as a contempt thereof.

7 (2) PROCESS.—Process in any proceeding
8 under this subsection may be served in the United
9 States judicial district in which the person being
10 proceeded against resides or carries on business or
11 wherever the person may be found.

12 **SEC. 312. CONFIDENTIALITY.**

13 (a) PROHIBITION.—No information on how a person
14 voted in a referendum conducted under this title shall be
15 made public.

16 (b) PENALTY.—Any person knowingly violating sub-
17 section (a) or the confidentiality terms of an order, as de-
18 scribed in section 305(i)(2), on conviction shall be subject
19 to a fine of not less than \$1,000 nor more than \$10,000
20 or to imprisonment for not more than one year, or both,
21 and, if an officer or employee of the Department of Agri-
22 culture or the PromoFlor Council, shall be removed from
23 office.

24 (c) ADDITIONAL PROHIBITION.—No information ob-
25 tained under this title may be made available to any agen-

1 cy or officer of the Federal Government for any purpose
2 other than the implementation of this title and any inves-
3 tigatory or enforcement actions necessary for the imple-
4 mentation of this title.

5 (d) WITHHOLDING INFORMATION FROM CONGRESS
6 PROHIBITED.—Nothing in this title shall be construed to
7 authorize the withholding of information from Congress.

8 **SEC. 313. AUTHORITY FOR SECRETARY TO SUSPEND OR**
9 **TERMINATE ORDER.**

10 Whenever the Secretary finds that an order issued
11 under this title, or any provision of the order, obstructs
12 or does not tend to effectuate the declared policy of this
13 title, the Secretary shall terminate or suspend the oper-
14 ation of the order or provision under such terms as the
15 Secretary determines appropriate.

16 **SEC. 314. CONSTRUCTION.**

17 (a) TERMINATION OR SUSPENSION NOT AN
18 ORDER.—The termination or suspension of an order, or
19 any provision thereof, shall not be considered an order
20 under the meaning of this title.

21 (b) PRODUCER RIGHTS.—Nothing in this title may
22 be construed to provide for control of production or other-
23 wise limit the right of individual cut flowers and cut
24 greens producers to produce cut flowers and cut greens.
25 This title seeks to treat all persons producing cut flowers

1 and cut greens fairly and to implement any order estab-
2 lished hereunder equitably in every respect.

3 (c) OTHER PROGRAMS.—Nothing in this title may be
4 construed to preempt or supersede any other program re-
5 lating to cut flowers or cut greens promotion and
6 consumer information organized and operated under the
7 laws of the United States or any State.

8 **SEC. 315. REGULATIONS.**

9 The Secretary may issue such regulations as are nec-
10 essary to carry out this title and the powers vested in the
11 Secretary by this title, including regulations relating to the
12 assessment of late payment charges and interest.

13 **SEC. 316. AUTHORIZATION OF APPROPRIATIONS.**

14 (a) IN GENERAL.—There are authorized to be appro-
15 priated for each fiscal year such sums as may be necessary
16 to carry out this title.

17 (b) ADMINISTRATIVE EXPENSES.—Funds appro-
18 priated under subsection (a) may not be used for payment
19 of the expenses or expenditures of the PromoFlor Council
20 in administering any provision of an order issued under
21 this title.

22 **SEC. 317. SEPARABILITY.**

23 If any provision of this title or the application thereof
24 to any person or circumstances is held invalid, the validity
25 of the remainder of the title and of the application of such

1 provision to other persons and circumstances shall not be
2 affected thereby.

3 **TITLE IV—LIME RESEARCH,**
4 **PROMOTION, AND CONSUMER**
5 **INFORMATION**

6 **SEC. 401. SHORT TITLE.**

7 This title may be cited as the “Lime Research, Pro-
8 motion, and Consumer Information Improvement Act”.

9 **SEC. 402. FINDINGS AND PURPOSE.**

10 (a) FINDINGS.—Congress finds the following:

11 (1) The Lime Research, Promotion, and
12 Consumer Information Act of 1990 was enacted on
13 November 28, 1990, for the purpose of establishing
14 an orderly procedure for the development and fi-
15 nancing of an effective and coordinated program of
16 research, promotion, and consumer information to
17 strengthen the domestic and foreign markets for
18 limes.

19 (2) The lime research, promotion, and
20 consumer information order required by such Act be-
21 came effective on January 27, 1992.

22 (3) Although the intent of such Act was to
23 cover seedless limes, the definition of the term
24 “lime” in section 1953(6) of such Act applies to
25 seeded limes. Therefore, the Act and the order need

1 to be revised before a research, promotion, and
2 consumer information program on seedless limes can
3 go into effect.

4 (4) Since the enactment of the Lime Research,
5 Promotion, and Consumer Information Act of 1990,
6 the United States production of fresh market limes
7 has plummeted and the volume of imports has risen
8 dramatically. The drop in United States production
9 is primarily due to damage to lime orchards in the
10 State of Florida by Hurricane Andrew in August
11 1992. United States production is not expected to
12 reach pre-Hurricane Andrew levels for possibly two
13 to three years because a majority of the United
14 States production of limes is in Florida.

15 (b) PURPOSES.—The purpose of this Act is—

16 (1) to revise the definition of the term “lime”
17 in order to cover seedless and not seeded limes;

18 (2) to increase the exemption level;

19 (3) to delay the initial referendum date; and

20 (4) to alter the composition of the Lime Board.

21 **SEC. 403. DEFINITION OF LIME.**

22 Section 1953(6) of the Lime Research, Promotion,
23 and Consumer Information Act of 1990 (7 U.S.C.
24 6202(6)) is amended by striking “citrus aurantifolia” and
25 inserting “citrus latifolia”.

1 **SEC. 404. REQUIRED TERMS IN ORDERS.**

2 (a) COMPOSITION OF LIME BOARD.—Subsection (b)
3 of section 1955 of the Lime Research, Promotion, and
4 Consumer Information Act of 1990 (7 U.S.C. 6204) is
5 amended—

6 (1) in paragraph (1)(A), by striking “7” and
7 inserting “3”;

8 (2) in paragraph (2)(B), by striking “7” and
9 inserting “3”;

10 (3) in paragraph (2)(F), by adding at the end
11 the following new sentence: “The Secretary shall ter-
12minate the initial Board established under this sub-
13section as soon as practicable after the date of the
14enactment of the Lime Research, Promotion, and
15Consumer Information Improvement Act.”; and

16 (4) by inserting after paragraph (2)(F) the fol-
17lowing new paragraph:

18 “(G) BOARD ALLOCATION.—The producer
19and importer representation on the Board shall
20be allocated on the basis of 2 producer mem-
21bers and 1 importer member from the district
22east of the Mississippi River and 1 producer
23member and 2 importer members from the dis-
24trict west of the Mississippi River.”.

25 (b) TERMS OF MEMBERS.—Subsection (b)(4) of such
26 section is amended—

1 (1) by striking “The Secretary” and all that
2 follows through “shall—” and inserting “The initial
3 members of the Board appointed under the amended
4 order shall serve a term of 30 months. Subsequent
5 appointments to the Board shall be for a term of 3
6 years, except that—”;

7 (2) in subparagraph (A), by striking “3” and
8 inserting “2”;

9 (3) in subparagraph (B), by striking “4” and
10 inserting “2”; and

11 (4) in subparagraph (C), by striking “4” and
12 inserting “3”.

13 (c) DE MINIMIS EXCEPTION.—Subsection (d)(5) of
14 such section is amended by striking “35,000” each place
15 it appears and inserting “200,000”.

16 **SEC. 405. INITIAL REFERENDUM.**

17 Section 1960(a) of the Lime Research, Promotion,
18 and Consumer Information Act of 1990 (7 U.S.C.
19 6209(a)) is amended by striking “Not later than 2 years
20 after the date on which the Secretary first issues an order
21 under section 1954(a),” and inserting “Not later than 30
22 months after the date on which the collection of assess-
23 ments begins under the order pursuant to section
24 1955(d),”.



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